

1 BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
2 STATE OF MONTANA

3
4 IN THE MATTER OF THE CIVIL
5 PENALTY IMPOSED AGAINST
6 THE MONTANA PRIMARY CARE
7 ASSOCIATION

8
9 FINDINGS OF FACT, CONCLUSIONS OF LAW,
10 ORDER, AND MEMORANDUM OPINION

11 These informal contested case proceedings were filed before the Commissioner
12 of Political Practices (Commissioner) to consider the appeal of the principal
13 referenced above. Pursuant to the provisions of Montana Code Annotated § 5-7-
14 306, the principal appealed the Commissioner's assessment of a civil penalty
15 resulting from its late filing of a lobbying disclosure report. The principal filed a
16 written Waiver of Hearing waiving its right to an in-person hearing, and submitted a
17 written statement for the Commissioner's consideration.

18 Based on the written submissions of the principal, the documents of record in the
19 Commissioner's file, and the applicable law, the Commissioner makes the following
20 findings of fact, conclusions of law, and order.

21 **FINDINGS OF FACT**

22 1. The Montana Primary Care Association is a principal registered with the
23 Commissioner.

24 2. The 2003 Montana Legislature passed House Bill 38 and the governor signed
25 it into law. The law took effect on February 18, 2003. House Bill 38, now codified
26 at § 5-7-306, MCA, establishes civil penalties that are required to be assessed
27 against any person who fails to file lobbying disclosure reports within the time
required by law.

1 3. The initial 2007 lobbying disclosure report for the Montana Primary Care
2 Association was required to be filed no later than February 15, 2007.

3 4. On January 29, 2007 the office of the Commissioner sent an email to all
4 principals, including the Montana Primary Care Association. The email advised
5 principals that a lobbying financial disclosure report covering the month of January,
6 2007 was required to be filed by February 15, 2007. The email referenced the
7 appropriate form that was required to be filed, known as a form L-5A, and noted
8 that it was available for download on the Commissioner's website. Citing the
9 provisions of § 5-7-208(4), MCA, the email stated: "A report must be filed in this
10 office even though neither lobbying nor incurring of lobbying expenses may have
11 occurred."

12 5. The Montana Primary Care Association failed to file its L-5A on or before
13 February 15, 2007.

14 6. On February 20, 2007, the Commissioner sent a letter to Alan Strange stating
15 that the January L-5A report was due February 15, 2007, but had not been received.
16 The letter stated that a civil penalty started being assessed on February 16, 2007, at
17 \$50 per day, and would continue until the report was filed or until the penalty
18 amount reached \$2,500. The letter urged the principal to fax the delinquent report
19 immediately, followed by a hard copy.

20 7. On February 22, 2007, the principal filed its report. Because the report was
21 filed 4 business days late (Monday, the 19th being a holiday), a \$200 civil penalty
22 was assessed.

23 8. The Montana Primary Care Association requested a hearing to contest the
24 civil penalty. The Commissioner issued a Notice of Agency Action and Opportunity
25 for Hearing on May 1, 2007. The Montana Primary Care Association filed a written
26 Waiver of Hearing and submitted a written statement for the Commissioner's
27 consideration.

1 9. In its written statement, the Montana Primary Care Association asked that the
2 penalty be waived because the person responsible for reporting passed away and the
3 office was making a difficult transition with new staff.

4 CONCLUSIONS OF LAW

5 1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604
6 and 5-7-306, MCA.

7 2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

8 3. § 5-7-306, MCA, provides:

9 **Civil penalties for delays in filing -- option for hearing --**
10 **suspension of penalty.** (1) In addition to any other penalties or
11 remedies established by this chapter, a person who fails to file a report
12 within the time required by this chapter is subject to a civil penalty of
 \$50 for each working day that the report is late until the report is filed
 or until the penalties reach a maximum of \$2,500 for each late report.

13 The person against whom a penalty is assessed may request an informal contested
14 case hearing before the Commissioner. At the hearing, the Commissioner is
15 required to consider any factors or circumstances in mitigation, and may reduce or
16 waive the civil penalty. § 5-7-306(3), MCA.

17 4. § 5-7-208(2), MCA, requires a lobbying disclosure report to be filed with the
18 Commissioner “by February 15th of any year the legislature is in session,” and the
19 report must include “all payments made in that calendar year prior to February 1.” §
20 5-7-208(4), MCA.

21 MEMORANDUM OPINION

22 Information offered in the written statement by Office Manager Jean Robertson
23 and corroborated by the Commissioner’s staff shows an effort was made to comply
24 with the reporting requirements. Robertson’s written statement that the late report
25 was a result of the recent death of the previous office manager is compelling. Under
26 such circumstances, waiving the fine is warranted.
27

1 I urge principals to carefully review and understand the statutory filing
2 requirements to ensure that they are in compliance with the law and to avoid the
3 assessment of civil penalties in the future.

4 **ORDER**

5 THEREFORE, IT IS HEREBY ORDERED that the civil penalty of \$200
6 assessed against the Montana Primary Care Association is waived.
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8 DATED this 25th day of July, 2007.

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11 _____
12 Dennis Unsworth
13 Commissioner of Political Practices

14 **NOTICE:** This is a final decision in a contested case. You have the right to seek
15 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-
16 4-701 through 2-4-711.

17 **CERTIFICATE OF SERVICE**

18 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF FACT,
19 CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

20 Alan Strange
21 Montana Primary Care Association
22 900 N. Montana
23 Helena MT 59601

24 DATED: July 25th, 2007

25 _____
26 Mary Baker
27 Program Supervisor